



## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-980]

#### **Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results of Countervailing Duty Administrative Review and Notice of Amended Final Results**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On May 19, 2022, the U.S. Court of International Trade (the Court) entered judgment sustaining the final results of remand redetermination pursuant to court order by the U.S. Department of Commerce (Commerce) pertaining to the 2016 countervailing duty (CVD) administrative review of the order on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells) from the People's Republic of China (China). Commerce is notifying the public that the final judgment in this case is not in harmony with Commerce's final results in the 2016 administrative review of solar cells from China and that Commerce is amending the final results.

**DATES:** Applicable May 29, 2022.

**FOR FURTHER INFORMATION CONTACT:** Gene H. Calvert, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3586.

#### **SUPPLEMENTARY INFORMATION:**

##### Background

On August 28, 2019, Commerce published its final results of the 2016 administrative review of solar cells from China.<sup>1</sup> Commerce reached affirmative determinations for mandatory

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<sup>1</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Recession of Review, in Part*; 2016, 84 FR 45125 (August 28, 2019) (*Final Results*), and accompanying Issues and Decision Memorandum, as amended by

respondents Canadian Solar Inc. and its cross-owned affiliates (collectively, Canadian Solar) and Jinko Solar Import and Export Co., Ltd. and its cross-owned affiliates (collectively, Jinko Solar), as well as for numerous other producers and exporters not selected for individual review.

On September 3, 2021, the Court remanded aspects of the *Final Results* to Commerce for further consideration.<sup>2</sup> The Court remanded Commerce’s determinations regarding Commerce’s calculation of the benchmark for aluminum extrusions; the determination of the benchmark for solar grade polysilicon; the use of adverse facts available (AFA) in its specificity finding for the provision of electricity for less than adequate remuneration (LTAR); the determination not to grant an entered value adjustment (EVA); and the determination regarding the Export Buyer’s Credit Program.<sup>3</sup>

In its remand redetermination, issued in December 2021,<sup>4</sup> Commerce provided additional explanation and evidence for its determinations and revised certain determinations consistent with the Court’s remand order, and the Court sustained Commerce’s remand redetermination in full.<sup>5</sup> Specifically, the Court found that Commerce’s determination to solely rely on data from IHS to establish a benchmark for aluminum extrusions, its determination that AFA was warranted regarding its specificity determination for the provision of electricity for LTAR because the Government of China (GOC) did not provide requested information, and that Commerce’s explanation that China’s solar-grade polysilicon market is distorted due to significant government participation by the GOC, all complied with the Court’s order.<sup>6</sup> The Court also found that the

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*Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2016*, 84 FR 68102 (December 13, 2019) (*Amended Final Results*).

<sup>2</sup> See *Canadian Solar Inc. v. United States*, 537 F. Supp. 3d 1380 (CIT 2021).

<sup>3</sup> *Id.*

<sup>4</sup> See *Canadian Solar Inc. v. United States*, CIT Consolidated Court No. 19-00178, “Final Results of Redetermination Pursuant to Court Remand,” dated December 13, 2021 (Remand Redetermination).

<sup>5</sup> See *Canadian Solar Inc., et al. v. United States*, Slip Op. 22-49 (CIT May 19, 2022).

<sup>6</sup> *Id.*

granting of the EVA and removal of the subsidy rate for the Export Buyer's Credit Program satisfied the options as provided by the Court.<sup>7</sup>

### Timken Notice

In its decision in *Timken*,<sup>8</sup> as clarified by *Diamon Sawblades*,<sup>9</sup> the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The Court’s May 19, 2020 judgment constitutes a final decision of the Court that is not in harmony with Commerce’s *Final Results* and *Amended Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, Commerce will continue suspension of liquidation of subject merchandise pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

### Amended Final Results

Because there is now a final court decision, Commerce is amending the *Amended Final Results* with respect to Canadian Solar, Jinko Solar, and for all other producers and exporters subject to this review. The revised total net countervailable subsidy rates for Canadian Solar and Jinko Solar for the period January 1, 2016, through December 31, 2016, are as follows:<sup>10</sup>

<b>Producer/Exporter</b>	<b>Subsidy Rate (percent <i>ad valorem</i>)</b>
Canadian Solar Inc. and Cross-Owned Affiliates <sup>11</sup>	3.65

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<sup>7</sup> *Id.*

<sup>8</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>9</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010).

<sup>10</sup> See Remand Redetermination at 56.

<sup>11</sup> Cross-owned affiliates are: Canadian Solar Inc.; Canadian Solar Manufacturing (Luoyang) Inc.; Canadian Solar Manufacturing (Changshu) Inc.; CSI Cells Co., Ltd.; CSI Solar Power (China) Inc. (name was changed to CSI Solar Power Group Co., Ltd. in December 2016); CSI Solartronics (Changshu) Co., Ltd.; CSI Solar Technologies Inc.; CSI New Energy Holding Co., Ltd. (name was CSI Solar Manufacture Inc. until July 2015); CSI-GCL Solar Manufacturing (Yancheng) Co., Ltd.; Changshu Tegu New Materials Technology Co., Ltd.; Changshu Tlian Co., Ltd.; and Suzhou SanySolar Materials Technology Co., Ltd.

Jinko Solar Import and Export Co., Ltd. and Cross-Owned Affiliates <sup>12</sup>	5.86
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Review-Specific Rate Applicable to the Non-Selected Companies Subject to this Review:

<b>Producer/Exporter</b>	<b>Subsidy Rate (percent <i>ad valorem</i>)</b>
Baoding Jiasheng Photovoltaic Technology Co., Ltd.	5.17
Baoding Tianwei Yingli New Energy Resources Co., Ltd.	5.17
Beijing Tianneng Yingli New Energy Resources Co., Ltd.	5.17
Canadian Solar (USA) Inc.	5.17
Changzhou Trina Solar Energy Co., Ltd.	5.17
Changzhou Trina Solar Yabang Energy Co., Ltd.	5.17
Chint Solar (Zhejiang) Co., Ltd.	5.17
Dongguan Sunworth Solar Energy Co., Ltd.	5.17
ERA Solar Co. Limited	5.17
ET Solar Energy Limited	5.17
Hainan Yingli New Energy Resources Co., Ltd.	5.17
Hangzhou Sunny Energy Science and Technology Co., Ltd.	5.17
Hengdian Group DMEGC Magnetics Co., Ltd.	5.17
Hengshui Yingli New Energy Resources Co., Ltd.	5.17
JA Solar Technology Yangzhou Co., Ltd.	5.17
JA Technology Yangzhou Co., Ltd.	5.17
Jiangsu High Hope Int'l Group	5.17
Jiawei Solarchina (Shenzhen) Co., Ltd.	5.17
Jiawei Solarchina Co., Ltd.	5.17
JingAo Solar Co., Ltd.	5.17
Jinko Solar (U.S.) Inc.	5.17
Jinko Solar International Limited	5.17
Lightway Green New Energy Co., Ltd.	5.17
Lixian Yingli New Energy Resources Co., Ltd.	5.17
Luoyang Suntech Power Co., Ltd.	5.17
Nice Sun PV Co., Ltd.	5.17
Ningbo Qixin Solar Electrical Appliance Co., Ltd.	5.17
Risen Energy Co., Ltd.	5.17
Shanghai BYD Co., Ltd.	5.17
Shanghai JA Solar Technology Co., Ltd.	5.17
Shenzhen Glory Industries Co., Ltd.	5.17
Shenzhen Topray Solar Co., Ltd.	5.17
Sumec Hardware & Tools Co., Ltd.	5.17
Systemes Versilis, Inc.	5.17
Taizhou BD Trade Co., Ltd.	5.17
tenKsolar (Shanghai) Co., Ltd.	5.17
Tianjin Yingli New Energy Resources Co., Ltd.	5.17
Toenergy Technology Hangzhou Co., Ltd.	5.17
Trina Solar (Changzhou) Science & Technology Co., Ltd.	5.17

<sup>12</sup> Cross-owned affiliates are: Jinko Solar Import and Export Co., Ltd.; Jinko Solar Co., Ltd.; Zhejiang Jinko Solar Co., Ltd.; Jinko Solar (Shanghai) Management Co., Ltd.; Jiangxi Jinko Photovoltaic Materials Co., Ltd.; and Xinjiang Jinko Solar Co., Ltd.

Wuxi Suntech Power Co., Ltd.	5.17
Yancheng Trina Solar Energy Technology Co., Ltd.	5.17
Yingli Energy (China) Co., Ltd.	5.17
Yingli Green Energy Holding Company Limited	5.17
Yingli Green Energy International Trading Company Limited	5.17
Zhejiang Era Solar Technology Co., Ltd.	5.17
Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company	5.17

#### Amended Cash Deposit Rates

Commerce will issue revised cash deposit instructions to U.S. Customs and Border Protection for all firms above that do not have a superseding cash deposit rate (*e.g.*, from a subsequent administrative review). For such firms, the revised cash deposit rates will be the rates indicated above, effective May 29, 2022.

#### Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1) and 777(i)(1) of the Act.

Dated: May 27, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

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